REMARKS

This amendment is being filed in response to the Office Action having a mailing date of December 23, 2008. Independent claim 34 is amended as shown. New claims 63-74 are added herein. No new matter has been added. Claims 39-42, 47-50, and 56-59 are canceled herein without prejudice. Claims 1-33 were previously canceled without prejudice. With this amendment, claims 34-38, 43-46, 51-55, 60-74 are pending in the application.

I.   Information disclosure statement (IDS)

An IDS along with an IDS fee are being filed herewith to submit additional references. It is kindly requested that an Examiner-initialed copy of this IDS be provided along with the next communication, so as to confirm that the references listed therein have been entered into the record and considered.

II.   Affidavit previously submitted on October 7, 2008

An affidavit of Prajakta S. Joshi was previously submitted on October 7, 2008 for the purposes of traversing the rejections set forth in the previous final Office Action of April 11, 2008. In response to this previously submitted affidavit, the present Office Action stated the following (emphasis ours) in page 2 (section 2):

> "In regard to the Affidavit/Declaration submitted on 10/07/2008, it should
> be noted that the Affidavit/Declaration filed under 35[sic] CFR 130, 131,
> 132 is for the purpose to disqualify the references of a rejection … An
> Affidavit/Declaration cannot disqualify a reference which is a statutory
> bar, i.e. it is known by publics[sic] for more than one year prior to the
> effective filing date of an application … Therefore, the submitted
> Affidavit/Declaration cannot disqualify these references of statutory bar."

Based on the above-quoted statements by the present Office Action in response to the previously submitted affidavit, it is believed that the present Office Action misunderstands the purpose and content of the previously submitted affidavit.

The previously submitted affidavit was not being filed under the provisions of 37 CFR 1.131 in order to show an invention date prior to the date of the references. Rather, the previously submitted affidavit was filed under the provisions of 37 CFR 1.132 in order to traverse the rejections set forth in the previous final Office Action. The provisions of 37 CFR 1.132 have no restrictions pertaining to the date of the reference(s) and/or the filing date of an application as determinative factors of whether or not an affidavit can be properly submitted and considered—rather, the provisions of 37 CFR 1.132 specify that "evidence" can be "submitted to traverse the rejection … on a basis not otherwise provided for." MPEP § 716 provides the following explanations (emphasis ours):

> "716 Affidavits or Declarations Traversing Rejections, 37 CFR 1.132
>
> 37 CFR 1.132 Affidavits or declarations traversing rejections or objections. When any claim of an application or a patent under reexamination is rejected or objected to, <u>any evidence submitted to traverse the rejection</u> or objection <u>on a basis not otherwise provided for must be by way of an oath or declaration under this section</u>.
>
> It is the <u>responsibility of the primary examiner</u> to <u>personally review and decide whether</u> affidavits or declarations submitted under 37 CFR 1.132 for the purpose of traversing grounds of rejection <u>are responsive to the rejection</u> and <u>present sufficient facts to overcome the rejection</u>."

Accordingly based on the above-quoted language from 37 CFR 1.132 and the MPEP, it is respectfully submitted that the contents of the previously filed affidavit can and

should be given due consideration. The contents of the affidavit are believed to be "responsive to the rejection" and "present sufficient facts to overcome the rejection", for example by providing testimonial evidence as to why the reference(s) do not provide the subject matter recited in the claims.

III. Discussion of the claims and cited references

The present Office Action has rejected claims 34-62 under 35 U.S.C. § 102(b) as allegedly being anticipated by a white paper entitled "Server Load Balancing in Today's Web-Enabled Enterprise" (hereinafter "the White Paper"). The present Office Action also rejected claims 34-62 under 35 U.S.C. § 103(a) as allegedly being unpatentable over an Alteon document entitled "Enhancing Web User Experience with Global Server Load Balancing" (hereinafter "the Alteon document") in view of the Cisco document entitled "Configuring the CSS Domain Name Server" (hereinafter "the Cisco document").

In view of the cancellation of claims 39-42, 47-50, and 56-59 herein, the rejections with respect to these claims are rendered moot.

The rejection with respect to claims 34-38, 43-46, 51-55, 60-62 are traversed for the reasons set forth below.

Furthermore for the reasons set forth below, it is respectfully submitted that new claims 63-74 are allowable over the cited references.

A. Independent claim 34

Independent claim 34 as presented herein recites, *inter alia*, "obtaining at one of said site switches mapping information that provides a translation between a private virtual IP address, configured at said site switch and associated with said at least one host server corresponding to said site switch, and a public virtual IP address" and "providing, by said site switch, said public virtual IP address to at least one load balancing controller." It is respectfully submitted that the present Office Action has not cites any passage from the references that meets these specific limitations.

In the September 30, 2008 affidavit by Prajakta S. Joshi, it was stated by Ms. Joshi, who is knowledgeable of the subject matter described in the White Paper, that for an architecture where a private virtual IP address was configured at the site switch, the site switch of the White Paper did not communicate public virtual IP addresses to the controller GSLB switch (CGS), prior to her invention. Instead for an architecture where a private virtual IP address was configured at the site switch, the private virtual IP address (rather than a public virtual IP address) was communicated by the White Paper's site switch to the CGS. With the embodiments of her invention, the site switch obtained (from a mapping device such as a NAT device or a firewall device) the mapping information that provides a translation between the private virtual IP address and the public virtual IP address, thereby enabling the site switch to provide this pubic virtual IP address to the load balancing controller.

The Examiner has not identified any teaching in the White Paper that overcomes or otherwise refutes Ms. Joshi's factual testimony in her affidavit of how the White Paper's site switch communicates with CGS switch (and what is communicated by the site switch), in an architecture where a private virtual IP address is configured at the site switch. The facts are that the site switch of the White Paper communicates a private IP address to a load balancing controller, if the private VIP address is configured at the site switch. This is different than what is recited in claim 34.

Accordingly, it is respectfully submitted that claim 34 is thus allowable over the White Paper.

Claim 34 is also allowable over the Alteon document and the Cisco document. Ms. Joshi's affidavit provides further information/proof as to how the embodiments of her invention are different from the subject matter of the Alteon document and the Cisco document.

For example, Figure One and the accompanying description on page 2 of the Alteon document describe site switch A that "returns site B's virtual IP address (VIP) address [172.176.110.20] to the client's local DNS." The local DNS server then "responds to client with site B's VIP" and the client "opens application session to IP 172.176.110.20." Since the VIP address 172.176.110.20 is returned to the client and the client is able to open a session to this

VIP address, this means that the VIP address 172.176.110.20 is a public VIP address configured at site B (described in the Alteon document as "site B's virtual IP address"). Thus, the Alteon document does <u>not</u> describe an implementation involving private VIP address configured at the site switch, and therefore it is respectfully submitted that the Alteon document does not provide the features in claim 1 of (a) "obtaining at one of said site switches mapping information that provides a translation between a private virtual IP address, configured at said site switch and associated with said at least one host server corresponding to said site switch, and a public virtual IP address," and (b) "providing, by said site switch, said public virtual IP address to at least one load balancing controller."

Pages 12-13 of the Cisco document describe the configuration to use a content services switch (CSS) to perform network address translation (NAT) to translate a private IP address of a server (*e.g.*, the private IP address 10.0.3.251) to a public VIP address (*e.g.*, the public VIP address 192.200.200.200) and vice versa. According to Ms. Joshi's reading of the Cisco document, the private IP address 10.0.3.251 of the server described in the Cisco document is a private <u>real</u> IP address of the server, rather than a private <u>virtual</u> IP address that is configured at a site switch. Evidence that the private IP address 10.0.3.251 is a real IP address of a server, rather than a private VIP address configured at a site switch, is provided on page 12 of the Cisco document, which states that "The source group enables the CSS to perform Network Address Translation to translate outbound traffic source IP addresses from <u>the server's private IP address (10.0.3.251)</u> to the public VIP address (192.200.200.200). To prevent server source port collisions, the CSS performs Network Address Translation on the server's source IP address and port by translating the: Source IP address to the IP address defined in the source group" (emphasis added). Accordingly, the Cisco document also does not provide the claimed features in claim 34 of (a) "obtaining at one of said site switches mapping information that provides a translation between a private virtual IP address, configured at said site switch and associated with said at least one host server corresponding to said site switch, and a public virtual IP address," and (b) "providing, by said site switch, said public virtual IP address to at least one load balancing controller."

Hence, claim 34 is further allowable over the cited references

B.   Independent claim 63 and its dependent claims

Independent claim 63 as presented herein recites, *inter alia*, "identifying, by a switch, a public virtual IP address that is mapped to a private virtual IP address configured at the switch" and "communicating, by the switch to a load balancing controller, the identified public virtual IP address." It is respectfully submitted that the present Office Action has not cited any passage(s) from the references that teaches these specific recitations.

For example, page 6 (section 4) of the present Office Action continues to cite and rely upon the description on page 6 and the figure on page 6 of the White Paper. However, the present Office Action has not cited any specific disclosure in the White Paper that teaches "a private virtual IP address configured at the switch" in the figure of page 6 and more particularly that teaches "identify, by the switch, a public virtual IP address that is mapped to a private virtual IP address configured at the switch" as recited in claim 63.

While page 2 (subsection entitled "Scalability and Management") of the White Paper mentions that "virtual IP (VIP) addresses are being used for server farms", the present Office Action has not identified any disclosure in the White Paper that teaches that such VIP address is private and is configured at a switch.

Moreover, while page 3 (subsection entitled "Security") of the White Paper mentions "IP addresses made publicly available" and the need to "hide IP addresses," the present Office Action has not identified any disclosure in the White Paper that teaches that such IP addresses are VIP addresses, including "a private virtual IP address configured at the switch" as recited in claim 63.

Still further, sections 8-10 of the previously filed affidavit provided testimonial evidence that to the extent that the technology of the White Paper might have involved private VIP addresses configured at a switch, the switch communicated the private VIP address configured thereon. This communication of the private VIP configured at the switch does not teach "communicating ... the identified public virtual IP address" as recited in claim 63.

It is noted that with respect to the terms "public VIP address" and "private VIP address", page 4 (section 2) of the present Office Action alleged that "these are only names. It cannot cause the patentability merely based on a name, i.e. if granting patent protection on the disputed claim based on the name would allow the patentee to exclude the public from practicing the name" (emphasis ours). The present Office Action's allegation that the terms "public VIP address" and "private VIP address" are "only names" is traversed herein. It is respectfully submitted that these terms are not merely/only "names" but rather such terms have a plain and ordinary meaning that would be understood by those skilled in the art. *See, e.g.*, MPEP § 2111.01. It appears that by referring to these terms recited in the claims as being merely/only "names", the present Office Action has not properly considered these terms according to their plain and ordinary meaning and therefore has not given these terms their due weight. Such a disposition by the present Office Action is contrary to MPEP § 2106, which requires that "when evaluating the scope of a claim, every limitation in the claim must be considered."

In view of at least the foregoing reasons, claim 63 is allowable over the White Paper, whether singly or in combination with the other cited references.

Claim 63 is also allowable over the Alteon document and the Cisco document.

For example, Figure One and the accompanying description on page 2 of the Alteon document describe site switch A that "returns site B's virtual IP address (VIP) address [172.176.110.20] to the client's local DNS" (emphasis ours). The local DNS server then "responds to client with site B's VIP" and the client "opens application session to IP 172.176.110.20." Since the VIP address 172.176.110.20 is returned to the client and the client is able to open a session to this VIP address, these teachings of the Alteon document clearly demonstrate that the VIP address 172.176.110.20 is a public VIP address configured at site B (described in the Alteon document as "site B's virtual IP address"). Thus, the Alteon document does not teach at least the recitations in claim 63 of "identifying, by a switch, a public virtual IP address that is mapped to a private virtual IP address configured at the switch" (emphasis ours). As such, claim 63 is allowable over the Alteon document, whether singly or in combination with the other cited references.

Turning now to the Cisco document, pages 12-13 of the Cisco document describe the configuration to use a content services switch (CSS) to perform network address translation (NAT) to translate a private IP address of a server (*e.g.*, the private IP address 10.0.3.251) to a public VIP address (*e.g.*, the public VIP address 192.200.200.200) and vice versa. According to Ms. Joshi's reading of the Cisco document as explained in section 14 of the previously submitted affidavit, the private IP address 10.0.3.251 of the server described in the Cisco document is a private <u>real</u> IP address of the <u>server</u>, rather than a private <u>virtual</u> IP address that is <u>configured at a switch</u>. Evidence that the private IP address 10.0.3.251 is a real IP address of a server, rather than a private VIP address configured at a switch, is provided on page 12 of the Cisco document, which states the following (emphasis ours):

> "The source group enables the CSS to perform Network Address Translation to translate outbound traffic source IP addresses from <u>the server's private IP address (10.0.3.251)</u> to the public VIP address (192.200.200.200). To prevent server source port collisions, the CSS performs Network Address Translation on the server's source IP address and port by translating the: Source IP address to the IP address defined in the source group"

Accordingly based on the above-quoted teachings, the Cisco document also does not provide at least the claimed features in claim 63 of "identifying, by a switch, a public virtual IP address that is mapped to a private <u>virtual</u> IP address <u>configured at the switch</u>" (emphasis ours). Further, the Cisco document is silent with respect to "communicating, by the switch to a load balancing controller, the identified public virtual IP address" recited in claim 63. As such, claim 63 is allowable over the Cisco document, whether singly or in combination with the other cited references.

Dependent claim 64 recites, *inter alia*, "sending, by the switch, the identified public virtual IP address to <u>the load balancing controller, which is located at the switch</u>"

(emphasis ours). Nowhere has the present Office Action identified any teaching in the cited references where the switch sends the identified public virtual IP address to a load balancing controller <u>located at the switch</u>. Hence, claim 64 is allowable.

     C.   <u>Independent claims 67 and 71, and independent claims 43 and 51</u>

Independent claims 67 and 71 recite limitations (using varying language) generally corresponding to those of claim 63. For reasons similar to those explained above, it is respectfully submitted that claims 67 and 71 are allowable as well.

Independent claims 43 and 51 recite limitations (using varying language) generally corresponding to those of claim 34. For reasons similar to those explained above, it is respectfully submitted that claims 43 and 51 are allowable as well.

     IV.   <u>Conclusion</u>

If there are any informalities or questions that can be addressed via telephone, the Examiner is encouraged to contact the attorney of record (Dennis M. de Guzman) at (206) 407-1574.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 500393.

All of the claims remaining in the application are believed to be allowable. Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,

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